

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HOWARD CLEVELAND JR.,)	
)	
Petitioner,)	
)	
v.)	1:15CV549
)	
RICHARD L. NEELY,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a state prisoner, submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed *in forma pauperis*. This Petition cannot be further processed because court records reveal that Petitioner already attacked the same convictions and sentences in a previous § 2254 petition in case 1:00CV641. Consequently, Petitioner must apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this Court to consider the current Petition, as required by 28 U.S.C. § 2244(b)(3)(A). This Court cannot consider the Petition unless that authorization first issues. Petitioner does not claim that he received authorization to file a successive Petition. Petitioner also does not assert any basis why authorization would not be required. Indeed, Petitioner indicates that all of the claims raised in the petition were raised in his direct state court appeal, and thus the claims could have been raised at the time of the first § 2254 petition.

Because of this pleading failure, the Petition should be dismissed. *In forma pauperis* status will be granted for the sole purpose of entering this Recommendation and Order.

IT IS THEREFORE RECOMMENDED that the Petition be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Petition as is required by 28 U.S.C. § 2244.

IT IS ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Recommendation and Order.

IT IS FURTHER ORDERED that the Clerk shall send Petitioner a copy of this Recommendation and Order, instruction forms for filing § 2254 petitions in this Court and for filing a Motion for Authorization in the United States Court of Appeals for the Fourth Circuit, an application to proceed *in forma pauperis*, and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 16th day of September, 2015.

/s/ Joi Elizabeth Peake
United States Magistrate Judge